IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 8562 of 1997

Dated 17th November, 2006

Between
Pingile Janardhan Reddy,
represented by his G.P.A. Gautam Pingile
and another.

… Petitioners

And

The State of Andhra Pradesh,
represented by its Secretary,
Revenue Department, Secretariat,
Hyderabad and others.

… Respondents.

ORAL ORDER:

The petitioners, in this writ petition, seek a writ declaring the action of the respondents in not paying the compensation for their land admeasuring Ac.10.34 situated in Survey Nos. 213, 214, 215, 216, 233/2 and 234/2 of Waddepally village, Hanamkonda, Warangal District in spite of taking their possession on 23.9.1981 pursuant to the notification under Section 4(1) of the Land Acquisition Act, 1894, as illegal, arbitrary and unconstitutional and a direction to pay the compensation.

On the requisition made by the Andhra Pradesh Housing Board, 3rd respondent herein, for construction of houses, the 2nd respondent herein issued notifications under Sections 4(1) and 6 of the Land Acquisition Act, 1894 (for short "the Act") seeking to acquire the lands of the petitioners admeasuring Ac.10.34 guntas situated in Survey Nos. 213, 214, 215, 216, 233/2 and 234/2 of Waddepally village, Hanamkonda and possession of the said land was taken on 23.9.1981 by invoking the urgency clause and dispensing with enquiry under Section 5-A of the Land Acquisition Act. The 4th respondent herein was appointed as the Land Acquisition Officer to conduct enquiry and pass Award. Though award enquiry was conducted by the 4th respondent, but the award could not be passed on the ground that proceedings under the Urban Land (Ceiling & Regulation) Act, 1976 relating to the subject lands were pending. The Draft Statement under Section 8(1) of the Urban Land (Ceiling & Regulation) Act, 1976 was issued on

26.6.1982 and after calling for objections, final orders were passed on 6.12.1993 under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 by the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad holding that the subject lands are not liable for inclusion in the computation of the holding of the declarant under the Urban Land (Ceiling and Regulation) Act. When the award was not passed even after passing of final orders under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, the petitioners made representation to the respondents for passing of the Award under the provisions of the Land Acquisition Act and payment of compensation. In spite of such a representation, award was not passed on the ground that the acquisition proceedings lapsed in view of the provision under Section 11-A of the Land Acquisition Act, 1894. Aggrieved thereby, the petitioners filed this writ petition.

It is the case of the petitioners that as much as notifications were issued to acquire the lands under Sections 4(1) and 6 of the Land Acquisition Act, 1894 and possession was taken pursuant to the notifications invoking the urgency clause, there is no reason or justification for not paying the compensation. It is their case that even if proceedings have lapsed, it is obligatory on the part of the respondents to notify the lands afresh by issuing necessary notification under Section 4(1) of the Act and to pay compensation by passing appropriate award. It is alleged that the action of the respondents to deprive the petitioners of their land, which is their private patta land, without payment of any compensation is in violation of their fundamental right guaranteed under Article 300-A of the Constitution of India.

Counter-affidavits have been filed by respondents 3 and 4.

4th respondent – Land Acquisition Officer has filed counter-affidavit stating that on the requisition of the lands of the petitioner referred to above and some other lands by the 3rd respondent – A.P. Housing Board for construction of houses to the general public, notifications under Sections 4(1) and 6 of the Act were gazetted on 27.3.1980, and, after publication of the notifications, on the request made by the A.P. Housing Board, the land belonging to a farmer in Sy.No.224 admeasuring Ac.1.28 was withdrawn from acquisition. However, the lands of the petitioners admeasuring Ac.10.34 gts. were taken possession on 23.9.1981 and were handed-over to the Requisition Department. It is further stated that the Special Officer and Competent Authority, Urban Land Ceiling has issued proceedings in Reference No. A3/522/79, dated 24.2.1987 stating that the above said lands are not hit by the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 and based on the same, preliminary valuation was approved for the purpose of award. But, however, when the draft award was sent to the Collector, Warangal for approval, the said authority had observed that the clearance by the Competent Authority, Urban Land Ceiling authorities was not correct and further stated that in view of the Land Acquisition (Amendment) Act, 1984, proceedings have lapsed. While admitting that award enquiry proceedings are still pending, it is stated that further steps will be taken only after clearance from the Special Officer and Competent Authority, Urban Land Ceiling, Warangal.

Separate counter affidavit is filed on behalf of Andhra Pradesh Housing Board stating that lands of the petitioners to the extent of Ac 10.34 gts was handed over to the Andhra Pradesh Housing Board and they have also utilized the same for public purpose of construction of houses and allotted the houses to the allottees after construction. It is further stated that though there was a move earlier

to acquire Ac.66.28 gts of land, but, subsequently other lands were withdrawn, but, so far as the land of the petitioners admeasuring Ac.10.34 gts is concerned, the same is not covered by the notifications of withdrawal. It is also stated that the A.P. Housing Board had been addressing letters for determining the compensation to be paid and they had also made necessary arrangements for payment of the amounts, but the said cheques were returned to the Housing Board. It is submitted that the A.P. Housing Board shall pay the compensation in terms of the award to be passed by the competent authority.

It is submitted by the learned Government Pleader for Land Acquisition and Shri J.Prabhakar, learned Standing Counsel for A.P. Housing Board that the lands of the petitioners were acquired several years back, but the award could not be passed only for want of clearance from the Urban Land Ceiling Authorities.

From the pleadings of the parties, it is clear that there is no dispute with regard to petitioners' ownership of the land covered by notifications under Sections 4(1) and 6 of the Land Acquisition Act, 1894. It is also not in dispute that the said lands were taken possession on 23.9.1981 pursuant to notifications issued under the Land Acquisition Act by dispensing with Section 5-A enquiry and were handed-over to the A.P. Housing Board, which has utilized the same for the public purpose of construction of houses and the houses were also allotted to the beneficiaries. Though the petitioners had filed declaration under the Urban Land (Ceiling and Regulation) Act, but, however, it was their case that the above said lands are not covered under the said Act. In any event, in this case, it is not in dispute that even before the determination of surplus land under the provisions of the Urban Land (Ceiling and Regulation)

Act, 1976, notifications under Sections 4(1) and 6 of the Act were issued and even possession was taken over on 23.9.1981 invoking the urgency clause under Section 17 of the Act by dispensing with enquiry under Section 5-A. Though final orders were passed under Section 8(4) of the Act, but, even in the said orders, the lands which were already taken possession pursuant to the notification under the Land Acquisition Act, 1894 were not computed to the holding of the petitioners by recording a finding that they are not liable to be included as the petitioners were not holding the said land. Even without going into the merits of the said issue, it is to be noticed that under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, the excess land vests with the State only after issuing necessary notification under Section 10(3) of the Act consequent to determination of surplus land under Section 8(4) of the Act. In the instant case, even much before the draft statement was issued, the lands of the petitioners were notified for acquisition and possession was taken over and final orders were passed under Section 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 on 6.12.1993 declaring the petitioners as non-surplus holders. In this regard, the decision relied on by the learned counsel for the petitioners in **Govt. of A.P. v. H.E.H. The Nizam**[1], wherein the Apex Court while interpreting the words 'hold', 'deemed' and 'vest' vis-à-vis the provisions under the Land Acquisition Act, 1894 held that while the excess land covered by the Ceiling Act stands vested in the Government free from all encumbrances from the date specified in declaration under Section 10(3) of the Urban Land (Ceiling and Regulation) Act, 1976, but where the Government has proceeded under the provisions of the Land Acquisition Act, it is obligatory on the part of the government and governmental authorities to determine the compensation only under the Land Acquisition Act,

fully supports the case of the petitioners. Even a Division Bench of this Court in **Special Officer and Competent Authority, ULC v. Syed Azam**[2] has categorically held that in respect of the land which had not vested under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 in the State before possession was taken by the State under the Land Acquisition Act and proceedings were completed without a murmur from the Urban Land Ceiling Authority, it is obligatory on the part of the acquisition authority to pay compensation by passing appropriate award under the provisions of the Land Acquisition Act only. Further in **Allahabad Development Authority v. Nasiruzzaman**[3], the Apex Court has held that Section 11-A of the Land Acquisition Act does not apply to cases of acquisition under Section 17 where possession was already taken and the land stood vested in the State and the notification under Section 4(1) and declaration under Section 6 do not lapse due to failure to make an award within two years from the date of the declaration.

In that view of the matter, there appears to be no reason at all in this case for not paying the compensation for more than two decades, having notified the land of the petitioners as early as on 27.3.1980 and having taken possession on 23.9.1981 depriving the petitioners of their valuable property. The only submission made by the learned counsel appearing for the respondents that there is no clearance from the Urban Land Ceiling Authority and as such, award was not passed cannot be accepted, particularly, in view of the fact that possession was taken only under the Land Acquisition Act even before the final orders are passed under Section 8(4) of the Urban Land (Ceiling and Regulation) Act and even in the final orders passed under Section 8(4), the lands covered by notification

under the Land Acquisition Act were not even computed to the holding of the petitioners. In that view of the matter, the contention that there is no approval from the Competent Authority is not at all a ground for not passing the Award and not paying the compensation to the petitioners.

As much as possession was taken by invoking urgency clause and dispensing with the enquiry under Section 5-A of the Act, it is obligatory on the part of the respondents to pass appropriate award and pay compensation by extending all statutory benefits as contemplated under the Land Acquisition Act, 1894.

In the result, writ petition is allowed with a direction to the respondents to determine the compensation payable to the petitioners for acquisition of their lands pursuant to notifications under Sections 4(1) and 6 of the Land Acquisition Act, 1894 published on 27.3.1980 by passing appropriate award within a period of three months from the date of the receipt of a copy of this order in accordance with the provisions of the Land Acquisition Act, 1894 and pay the same accordingly. No order as to costs.

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17--11—2006 **R.SUBHASH REDDY, J.**

VR

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[1] (1996) 3 SCC 282

[2] 2003(4) ALT 437 (D.B.)

[3] (1996) 6 SCC 424